



**Onkeo v Onkeo & another (Environment & Land Case E022 of 2023)
[2023] KEELC 21879 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E022 OF 2023
LN MBUGUA, J
NOVEMBER 21, 2023**

BETWEEN

BERNARD OSASO ONKEO PLAINTIFF

AND

ROBERT MOKUA ONKEO 1ST DEFENDANT

LAWRENCE ONKEO OSASO 2ND DEFENDANT

RULING

1. The plaintiff commenced this suit vide a plaint dated 20.7.2023 seeking a declaration that the defendants are in breach of sale agreement dated 20.7.2012 and that they should be enjoined from interfering with the piece of land known as Chieko Housing Limited Plot No. 619.
2. The Defendants filed a preliminary objection dated 28.9.2023 stating that this suit should be dismissed with costs for being sub judice in light of the proceedings in Nairobi MCCC No. 30 of 2007 (OS) Lawrence Osaso Onkeo v Bernard Osaso Onkeo & Chieko Housing Co. Ltd.
3. On 2.10.2023, this court directed for the Preliminary Objection to be heard by way of written submissions, of which the defendant was to file their submissions by 16.10.2023, while the Plaintiff was to file by 30.10.2023.
4. On their part, the Defendants filed written submissions dated 12.10.2023, where they argued that the existence of similar proceedings in Nairobi –MCCC No. 30 of 2007 (O.S) Lawrence Osaso Onkeo v Bernard Osaso Onkeo & Chieko Housing Co. Ltd has not been disputed, hence this matter is subjudice.
5. The defendants rely on the provisions of section 6 of the *Civil Procedure Act* which expressly bars the consideration of any subsequent suit hinged on similar issues. They also rely on the cases *Daniel Kipkemoi Bett & Another v Joseph Rono* [2022] eKLR, *Sunit Singh Varma & Another v Uniken Limited*



§ 2 others [2022] eKLR, Independent Electoral & Boundaries Commission v Jane Cheprenger & 2 others [2015] eKLR, Mwangi Stephen Muriithi v Daniel T. Arap Moi & another [2017] eKLR, Leornard Omullo v National Land Commission [2021] eKLR and Grace Wanjiru Kariuki v Joseph Wainaina Mararo & another [2019] eKLR.

6. The plaintiff did not comply with the courts directions on the filing of submissions.
7. I have considered the preliminary objection and the submissions of the defendants. The issue falling for determination is whether this suit is sub-judice to the case Nairobi MCCC No. 30 of 2007 (OS) Lawrence Osaso Onkeo v Bernard Osaso Onkeo & Chieko Housing Co. Ltd.
8. Section 6 of the Civil Procedure Act bars multiplicity of suits by the doctrine of subjudice whose importance is aptly discussed by the Supreme Court in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested parties) [2020] eKLR.
9. In Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR, the court stated that;

“...in determining whether or not sub judice applies, it is the substance of the claim that ought to be looked at rather than the prayers sought.”
10. I have considered the pleadings filed in Nairobi MCCC No. 30 of 2007 (OS) and in the said matter, the issues raised therein are identical to the issues raised herein, being the registration and proprietorship of the suit premises. Only the parties in this suit have been switched up. What more, injunctive orders had even been issued way back on 15.10.2007 against the current plaintiff in respect of the suit property.
11. In Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya (Supra), the court stated that a mere addition of parties in a subsequent suit does not render the doctrine of subjudice inapplicable. In the circumstances, the preliminary objection is merited and this suit is hereby struck out with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mr. Ngogu for Plaintiff

Gikambo for Defendant

